IN THE UTAH COURT OF APPEALS

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COURT OF APPEALS

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Piper C. Joos,	MEMORANDUM DECISION
	(Not For Official Publication)
Plaintiff and Appellee,	
	Case No. 990666-CA
v.	FILED
	(November 4, 1999)
Dan Rodney Joos,	
Defendant and Appellant)	1999 UT App 312

Third District, Salt Lake Department
The Honorable Sandra Peuler

Attorneys: Dan Rodney Joos, Salt Lake City, Appellant Pro Se
E.H. Fankhauser, Salt Lake City, for Appellee

Before Judges Wilkins, Bench, and Orme.

PER CURIAM:

Dan Rodney Joos appeals from an Order Denying Respondent's Objection to Commissioner's Recommendation. The case is before us on Piper C. Joos' motion for summary disposition.

Appellee first contends the appeal should be dismissed for lack of jurisdiction. A signed minute entry can constitute a final appealable judgment only where it is both dispositive and

clearly intended to serve as the final order. See Swenson Assoc. Architects v. State, 889 P.2d 415, 417 (Utah 1994) . Where, as in the present case, the minute entry directs counsel to prepare an order containing the court's ruling, the minute entry cannot serve as a final appealable order. Id. The appeal was timely taken from the final order subsequently entered on July 6, 1999.

Appellee also argues that the appeal presents no substantial question and that appellant's arguments are precluded by res judicata. Appellant pursued a direct appeal from the divorce decree, which resulted in affirmance of the decree. Appellant subsequently filed motions in the district court seeking to set aside the division of private property and force appellee to renegotiate, to modify visitation and custody, and to declare statutes giving the court jurisdiction over divorce proceedings unconstitutional. Appellant also moved to have all motions considered by the district court judge rather than the commissioner. The relief sought by appellant was denied. We conclude that the judgment should be summarily affirmed.

Appellant's challenge to the distribution of private property should have been raised on direct appeal and is barred by res judicata. Similarly, appellant's efforts to modify child custody and visitation must be raised by a proper petition to modify the decree that demonstrates, as a threshold matter, that a substantial change of circumstances has occurred since the entry of the decree. See Utah Admin. Code P. R6-404; see also Jacobsen v. Jacobsen, 703 P.2d 303, 305 (Utah 1985) ("In the absence of [a showing of substantial change of circumstances] the decree shall not be modified and the matters previously litigated and incorporated therein cannot be collaterally attacked in the face of the doctrine of res judicata.").

Appellant also argues that the district court lacked "constitutional jurisdiction"over the parties' divorce proceedings. Appellant claims that the statutes pertaining to divorce, which give the courts jurisdiction to make equitable orders relating to the children, property, debts or obligations of the parties and granting continuing jurisdiction over these subjects, discriminate against married persons in favor of unmarried or cohabiting persons. Appellant's argument is without merit. "When [the marital] status is created, the rights involved are not merely private, but are also of public concern insofar as they relate to the welfare of families." Neilson v. Neilson, 780 P.2d 1264, 1269 (Utah Ct. App. 1989) . We reject appellant's contention that the divorce statutes are vague and overbroad or violate equal protection guarantees.

Accordingly, we affirm the judgment. Because appellee was awarded attorney fees and costs below and has prevailed on appeal, this case is remanded to the trial court for an award of the costs and attorney fees reasonably incurred by appellee on appeal. See Childs v. Childs, 967 P.2d 942, 947 (Utah Ct. App. 1998).

/s/
Michael J. Wilkins,
Presiding Judge

/s/
Russell W. Bench, Judge

/s/
Gregory K. Orme, Judge

990666- CA

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State of Utah

JUDICIAL CONDUCT COMMISSION

645 South 200 East #104
Steven H. Stewart Salt Lake City, Utah 84111
Executive Director 801 \533-3200
Fax 801\533-3208

February 17, 1999

Mr. Dan Rodney Joos
c/o Dr. Gene R. Fuller
2446 East Sabal
Salt Lake City, UT 84121

RE: Case No. 99-3D-061 - Hon. Sandra Peuler,
Dan Rodney Joos, Complainant
Case No. 99-3D-062 - Hon. Judith M. Billings,
Dan Rodney Joos, Complainant
Case No. 99-3D-063 - Hon. James Z. Davis,
Dan Rodney Joos, Complainant
Case No. 99-3D-064 - Hon. Norman H. Jackson,
Dan Rodney Joos, Complainant
Case No. 99-3D-065 - Hon. Michael J. Wilkins,
Dan Rodney Joos, Complainant
Case No. 99-3D-066 - Hon. Pamela T. Greenwood,
Dan Rodney Joos, Complainant
Case No. 99-3D-067 - Hon. Christine Durham,
Dan Rodney Joos, Complainant
Case No. 99-3D-068 - Hon. Michael Zimmerman,
Dan Rodney Joos, Complainant
Case No. 99-3D-069 - Hon. Richard C. Howe,
Dan Rodney Joos, Complainant

Case No. 99-3D-070 - Hon. Leonard Russon,
Dan Rodney Joos, Complainant
Case No. 99-3D-071 - Hon. I. Daniel Stewart,
Dan Rodney Joos, Complainant

Dear Mr. Joos:

After considering the record in this case, the Commission dismissed your complaint against Judge Peuler and Justices Billings, Davis, Jackson, Wilkins, Greenwood, Durham, Zimmerman, Howe, Russon and Stewart. The reason your complaints were dismissed is because the Commission found that they involved a legal question which can only be addressed by an appellate court.

The Commission appreciates your interest in the Utah judiciary.

Sincerely,

JUDICIAL CONDUCT COMMISSION

/s/
Steven H. Stewart, Executive Director

FILED
December 17, 1999
Court of Appeals

IN THE UTAH COURT OF APPEALS

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Piper C. Joos,	)	
	)	
Plaintiff and Appellee,	)	ORDER
	)	
v.	)	Case No. 990666-CA
	)	
Dan Rodney Joos,	)	
	)	
Defendant and Appellant.	)	

Before Judges Wilkins, Bench, and Orme.

This case is before the court on appellant's Petition for Rehearing.

This case was determined pursuant to Rule 10 of the Utah Rules of Appellate Procedure based upon appellee's motion for summary disposition. Appellant contends that this procedure denied his right of appeal; however, this court has previously rejected this contention. See Hernandez v. Hayward, 764 P.2d 993, 996 (Utah Ct. App. 1988) (per curiam) ("Summary affirmance under Rule 10 is a determination of the appeal on its merits, after a full and adequate opportunity is afforded all parties to present the authorities which, based upon

the record below, are relevant to the issues and determinative of the appeal."); see also State v. Palmer, 786 P.2d 248, 249 (Utah Ct. App. 1990) (per curiam) (providing that an appellant is not denied the state constitutional right of appeal by summary disposition proceedings) . Based upon the foregoing,

IT IS HEREBY ORDERED THAT the petition for rehearing is denied.

Dated this 17th day of December, 1999.

FOR THE COURT:

/s/
Gregory K. Orme, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Dan Rodney Joos,
Appellant and Petitioner,
vs. No. 20000045-SC
Piper C. Joos (Monte), 990666-CA
Appellee and Respondent. 954904707

ORDER

This matter is before the Court upon a Petition for Writ of Certiorari, filed pursuant to Rule 48, of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari filed on January 18, 2000 is denied.

FOR THE COURT:

March 13, 2000
Date

/s/
Richard C. Howe
Chief Justice